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14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 LOS ANGELES WATERKEEPER, a
non-profit corporation,

18 Plaintiff,

19
20 vs.

21 AAA PLATING & INSPECTION,
22 INC., a California corporation, DOES
23 1 through 10,

24 Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 to 1387)

25 LOS ANGELES WATERKEEPER (“WATERKEEPER” or “Plaintiff”), a

26
27 California non-profit corporation, by and through its counsel, hereby alleges:

1 **I. JURISDICTION AND VENUE**

2 1. This complaint seeks relief for ongoing violations by AAA PLATING &
 3 INSPECTION, INC., a California corporation (“Defendant” or “AAA”), and DOES 1
 4 through 10 of both substantive and procedural requirements of the Federal Water
 5 Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “Act”) and
 6 the National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA
 7 S000001, State Water Resources Control Board (“State Board”) Water Quality Order
 8 No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ, Water
 9 Quality Order No. 97-03-DWQ (“1997 Permit”) and Order No. 2014-0057-DWQ
 10 (“2015 Permit”) (collectively referred to herein as the “Permit” or “General Permit”),
 11 resulting from polluted stormwater and non-stormwater discharges from the industrial
 12 facility owned and operated by AAA located between 410 and 424 East Dixon Street
 13 (“Facility”) in Compton, California.

14 2. This Court has subject matter jurisdiction over the parties and the subject
 15 matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. §
 16 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United
 17 States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201–02 (power
 18 to issue declaratory relief in case of actual controversy and further necessary relief
 19 based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief and
 20 civil penalties); and 33 U.S.C. §§ 1319(d); 1365(a) (civil penalties).

21 3. On May 7, 2018, Plaintiff provided notice to AAA of violations at the

1 Facility of the Act and Permit, and of its intention to file suit against Defendant, to the
 2 Administrator of the United States Environmental Protection Agency (“EPA”); the
 3 Administrator of EPA Region IX; the Executive Director of the State Water
 4 Resources Control Board (“State Board”); the Executive Officer of the California
 5 Regional Water Quality Control Board, Los Angeles Region (“Regional Board”); and
 6 to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct
 7 copy of the notice letter is attached as EXHIBIT A, and is incorporated by reference.
 8

9
 10 4. More than sixty (60) days have passed since notice was served on AAA
 11 and the State and Federal agencies. Plaintiff is informed and believes, and thereupon
 12 alleges, that neither the EPA nor the State of California has commenced or is
 13 diligently prosecuting a court action to redress the violations alleged in this complaint.
 14 This action’s claim for civil penalties is not barred by any prior administrative penalty
 15 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).
 16

17
 18 5. Venue is proper in the Central District of California pursuant to Section
 19 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
 20 located within this judicial district.
 21
 22

23 **II. INTRODUCTION**

24 6. This complaint seeks relief for unlawful discharges of polluted storm
 25 water and non-storm water from AAA’s Facility in violation of the Act and Permit.
 26 Defendant’s failures to comply with the discharge prohibitions, technology-based and
 27 water quality-based standards, planning and monitoring requirements, and other
 28

1 procedural and substantive requirements of the Permit and the Act are ongoing and
2 continuous.

3 7. With every significant rainfall event millions of gallons of polluted storm
4 water originating from industrial operations, like those conducted by Defendant, pour
5 into storm drains and local waterways. The consensus among agencies and water
6 quality specialists is that storm water pollution accounts for more than half of the total
7 pollution entering surface waters each year.
8

9 8. Los Angeles' waterways are ecologically sensitive areas and are essential
10 habitat for dozens of fish and bird species as well as macro-invertebrate and
11 invertebrate species. The waterways provide aesthetic opportunities, such as wildlife
12 observation, and the public uses these waterways for activities such as water contact
13 sports and non-contact recreation.
14

15 9. Industrial facilities, like Defendant's, that discharge storm water and non-
16 storm water contaminated with sediment, heavy metals, and other pollutants
17 contribute to the impairment of downstream waters and aquatic dependent wildlife,
18 expose people to such toxins, and harm the special aesthetic and recreational
19 significance Los Angeles' waterways have for people in the surrounding
20 communities.
21

22 **III. THE PARTIES**

23 10. WATERKEEPER is a non-profit public benefit corporation organized
24 under the laws of the State of California with its main office located at 120 Broadway,
25

1 Santa Monica, California 90401. WATERKEEPER is an organization of the
2 Waterkeeper Alliance, the world's fastest growing environmental movement.

3 11. Founded in 1993, WATERKEEPER is dedicated to the preservation,
4 protection and defense of the inland and coastal surface and groundwaters of Los
5 Angeles County. The organization works to achieve this goal through education,
6 litigation and regulatory programs that ensure water quality protection for all
7 waterways in Los Angeles County. Where necessary to achieve its objectives,
8 WATERKEEPER undertakes enforcement actions under the Act on behalf of itself
9 and its members.
10
11
12

13 12. LAW has approximately 3,000 members who live and/or recreate in and
14 around the Los Angeles basin, including many who live and recreate along the Los
15 Angeles River and connected waters. WATERKEEPER members use and enjoy local
16 waters and waterways to fish, surf, swim, sail, SCUBA dive, kayak, bird watch, view
17 wildlife, hike, bike, walk, and run. Additionally, WATERKEEPER members use the
18 waters to engage in scientific study through pollution and habitat monitoring, and
19 restoration activities.
20
21
22

23 13. The unlawful discharge of pollutants from the Facility into the Los
24 Angeles River and downstream water bodies impairs the ability of WATERKEEPER
25 members to use and enjoy these waters. Thus, the interests of WATERKEEPER and
26 its members have been, are being, and will continue to be adversely affected by the
27 Facility's failure to comply with the Act and Permit. The relief sought herein will
28

1 redress the harms to Plaintiff caused by Defendant's activities. Continuing commission
2 of the acts and omissions alleged herein will irreparably harm Plaintiff and its members,
3 for which harm they have no plain, speedy or adequate remedy at law.
4

5 14. AAA's website describes various industrial processes that occur at the
6 Facility, including anodizing, cleaning, special processing, non-destructive testing,
7 testing, painting/coating, and other.
8

9 15. WATERKEEPER'S investigation indicates that the Facility provides a
10 wide variety of plating, anodizing, testing, coating, painting and cleaning services.
11 Industrial services offered by AAA at the Facility include, *inter alia*: nickel strike
12 plating; cadmium plating; zinc plating; chromic acid anodizing; sulfuric anodizing; hard
13 anodizing; boric-sulfuric anodizing; phosphoric anodizing; and ROHS and chem film
14 anodizing; abrasive cleaning; titanium cleaning; bright dipping (copper); glass and
15 plastic media blasting; passivation (Cres + Ti); etching/pickling (Al, Cres, and Ti);
16 cadmium plating and coating; IVD aluminum coating; etch and adhesive bonding
17 primers; epoxy and polyurethane topcoats; copper sulfate testing; and passivation.
18
19
20
21

22 16. The Facility is among those industrial facilities subject to regulation by
23 the South Coast Air Quality Management District ("Air District") under Proposed
24 Amended Rule 1469 – Hexavalent Chromium Emissions from Chromium
25 Electroplating and Chromic Acid Anodizing Operations ("PAR 1469"). PAR 1469
26 augments existing Air District requirements on plating and anodizing operations.
27
28

17. Upon information and belief, Plaintiff alleges that the true names, or

1 capacities of DOES 1 through 10, inclusive (the “DOES”), whether individual,
 2 corporate, associate or otherwise, are presently unknown to WATERKEEPER, who
 3 therefore sue said Defendants by such fictitious names. Plaintiff will amend this
 4 Complaint to show their true names and capacities when the same have been
 5 ascertained. Plaintiff’s initial investigations did not establish whether AAA is
 6 associated with any other individual, corporate, associate or otherwise.
 7
 8

9 **III. LEGAL BACKGROUND**

10 **A. The Clean Water Act.**

11
 12 18. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the
 13 discharge of any pollutant into waters of the United States unless the discharge
 14 complies with various enumerated sections of the Act. Among other things, section
 15 301(a) prohibits discharges not authorized by, or in violation of, the terms of a
 16 NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. §§ 1311(a) and
 17 1342(b).
 18
 19

20 19. Section 402(p) of the Act establishes a framework regulating industrial
 21 storm water discharges under the NPDES permit program. 33 U.S.C. § 1342(p).
 22

23 20. The Act requires all point source discharges of pollutants to waters of the
 24 United States be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. §
 25 122.26(c)(1).
 26

27 21. Section 402(b) of the Act allows each state to administer an EPA-
 28 approved NPDES permit program for regulating the discharge of pollutants, including

1 discharges of polluted storm water. *See* 33 U.S.C. § 1342(b).

2 22. States with approved NPDES permit programs are authorized by Section
3 402(b) to regulate industrial storm water discharges through the issuance of a
4 statewide general NPDES permit applicable to all industrial dischargers and/or
5 through individual NPDES permits issued to dischargers. *See* 33 U.S.C. § 1342(b).

6 23. The EPA promulgated regulations for the NPDES permit program that
7 define waters of the United States. *See* 40 C.F.R. § 122.21.
8

9 24. EPA interprets ‘waters of the United States’ to include traditionally
10 navigable waters, waters tributary to navigable waters, wetlands adjacent to navigable
11 waters, and other waters that could affect interstate commerce and have a significant
12 nexus to a water of the United States. 40 C.F.R. § 122.21.
13

14 25. A significant nexus is established if the receiving waters, either alone or
15 in combination with similarly situated lands in the region, significantly affect the
16 chemical, physical, and biological integrity of other covered waters. *Rapanos v.*
17 *United States*, 547 U.S. 715 (2006). A significant nexus is established if waters that
18 are tributary to navigable waters have flood control properties, including functions
19 such as the reduction of flow, pollutant trapping, and nutrient recycling. *Id.* at 780.
20

21 26. Section 505(a)(1) of the Act provides for citizen enforcement against any
22 “person” who is alleged to be in violation of an “effluent standard or limitation...or an
23 order issued by the Administrator or a State with respect to such a standard or
24 limitation.” *See* 33 U.S.C. §§ 1365(a)(1) and 1365(f).
25
26
27
28

1 27. AAA is a “person” pursuant to the Act. *See* 33 U.S.C. § 1362(5).

2 28. “Effluent standard or limitation” is defined to include: (a) the prohibition
3 in section 301(a) against unpermitted discharges; or (b) a condition of an NPDES
4 permit such as the General Permit. *See* 33 U.S.C. § 1365(f).

6 29. Each separate violation of the Act subjects the violator to a penalty of up
7 to \$52,414 per day per violation for violations occurring after November 2, 2015; and
8 up to \$37,500 per day per violation for violations occurring prior to and including
9 November 2, 2015. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4
10 (Adjustment of Civil Monetary Penalties for Inflation).

13 30. Section 505(d) of the Act allows prevailing or substantially prevailing
14 parties to recover litigation costs, including fees for attorneys, experts, and consultants
15 where it finds that such an award is appropriate. *See* 33 U.S.C. § 1365(d).

17 **B. California’s Stormwater Permit.**

18 31. California is authorized by EPA to issue NPDES permits. In California,
19 the relevant NPDES permit is the General Permit, which is issued by the State Board
20 and implemented by the Regional Board for the region in question. *See* 33 U.S.C. §
21 1311(a), 1342, 1362(6), (7), (12).

24 32. The State Board is charged with regulating pollutants to protect
25 California’s water resources. *See* Cal. Water Code § 13001.

27 33. In order to discharge storm water lawfully, industrial dischargers in
28 California must comply with all terms of the General Permit, or obtain and comply

1 with an individual NPDES permit. 33 U.S.C. § 1311(a); *see also* 1997 Permit, Finding
 2 #2 and 2015 Permit, Section I(A) (Finding 12).

3 34. Compliance with the Permit constitutes compliance with the Act for
 4 purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).
 5 Conversely, “Permit noncompliance constitutes a violation of the Clean Water Act
 6 and [California’s] Water Code.” 1997 Permit, Section C(1); 2015 Permit, Section
 7 XXI(A). The 2015 Permit superseded the 1997 Permit, except for enforcement
 8 purposes, and its terms are as stringent, or more so, than the terms of the 1997 Permit.
 9 *See* 2015 Permit, Section I(A) (Finding 6).

13 35. The Permit’s annual compliance period runs from July 1 to June 30
 14 (“Reporting Year”).

16 36. Compliance with the Permit requires that permittees consistently engage
 17 in a feedback loop strategy with four *independent, but mutual-reinforcing* actions: 1)
 18 executive planning and pollution control strategy design; 2) on-the-ground
 19 implementation of pollution control strategies; 3) monitoring stormwater discharges
 20 for evidence of pollution; and 4) annual evaluation of the effectiveness of pollution
 21 control strategies.

24 **C. The Permit’s Discharge Prohibitions, Effluent Limitations, and**
 25 **Receiving Water Limitations.**

26 37. The Permit contains a Discharge Prohibition on direct and indirect
 27 discharges of materials other than storm water (“non-storm water discharges”) that are
 28

1 not otherwise authorized by an NPDES permit to waters of the United States. 1997
2 Permit, Section A(1); 2015 Permit, Section III(B).

3 38. The Permit contains a Discharge Prohibition on storm water discharges
4 and authorized non-storm water discharges that contain pollutants that cause or
5 threaten to cause pollution, contamination, or nuisance as defined in section 13050 of
6 California Water Code. 1997 Permit, Section A(2); 2015 Permit, Section III(C).
7

8 39. The Permit contains a “technology-based” Effluent Limitation requiring
9 permittee facilities to reduce or prevent pollutants in storm water discharges through
10 the implementation of Best Available Technology Economically Achievable (“BAT”)
11 for toxic or non-conventional pollutants, and Best Conventional Pollutant Control
12 Technology (“BCT”) for conventional pollutants. 40 C.F.R. §§ 401.15-16; 1997
13 Permit, Section B(3); 2015 Permit, Section V(A).
14

15 40. Compliance with this Effluent Limitation requires permittee facilities to
16 implement effective, site-specific pollution control strategies called Best Management
17 Practices (“BMPs”) that are designed and implemented to prevent or reduce storm
18 water discharges *consistent with* BAT and/or BCT treatment standards.
19

20 41. BMPs achieving BAT/BCT-level control may include structural (e.g.
21 installation of curbs to direct storm water flows, or filters to reduce pollutant
22 concentrations), non-structural (e.g. sweeping/washing surfaces exposed to pollutants,
23 or equipment inspections), or a combination of structural and non-structural measures.
24

25 42. § 304(a)(4) of the Act identified “conventional pollutants” to include
26
27
28

1 Total Suspended Solids (“TSS”), Oil and Grease (“O&G) and pH. *See* 40 C.F.R.
2 401.16. Permittees must design BMPs for all sources of TSS, O&G and pH that meet
3 the BCT standard; and thereafter implement, maintain and revise/adapt such BMPs so
4 as to ensure the concentration of TSS, O&G and pH in any storm water discharge is
5 reduced or prevented consistent with the BCT standard.
6

7
8 43. Multiple metals discharged from the Facility, including but not limited to
9 copper, chromium, cadmium, zinc and nickel, are classified as toxic pollutants
10 pursuant to the Act’s section 307(a)(1) at 40 C.F.R. 401.15.
11

12 44. Permittees must design BMPs for all sources of toxic pollutants; and
13 thereafter implement, maintain and revise/adapt such BMPs so as to ensure pollutant
14 concentrations in any storm water discharge is reduced or prevented consistent with
15 the BAT standard.
16

17 45. EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial
18 Activities (“MSGP”) includes numeric benchmark targets for pollutant concentrations
19 in storm water discharges (“Benchmarks”). *See* United States Environmental
20 Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges
21 Associated with Industrial Activity, as modified effective May 9, 2009.
22

23
24 46. Benchmarks serve as objective measures for evaluating whether the
25 BMPs designed and implemented at a facility achieve the statutory BAT/BCT
26 standards. *See* MSGP, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); *see also* MSGP,
27 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); *see also* MSGP, 65 Fed. Reg. 64,746,
28

1 64,766-67 (Oct. 30, 2000).

2 47. Discharges from an industrial facility containing pollutant concentrations
3 that exceed Benchmark targets indicate that the facility needs to revise its BMPs to
4 conform to BAT/BCT statutory requirements. *Id.* The persistent discharge of
5 stormwater containing pollutant concentrations that exceed Benchmark targets
6 provides *prima facie* evidence that a facility has failed to develop, implement and/or
7 revise pollution control strategies consistent with BAT/BCT standards.
8
9

10 48. The Permit contains certain Receiving Water Limitations intended to
11 protect surface waters to which pollutants are discharged. 1997 Permit, Section C(1)-
12 (2); 2015 Permit, Section VI(A).
13

14 49. The Facility's Receiving Water include Compton Creek, the Los Angeles
15 River, the Los Angeles River Estuary, the Los Angeles/Long Beach Harbor, San
16 Pedro Bay, and the Pacific Ocean (hereinafter "Receiving Waters"), all of which are
17 waters of the United States. The Receiving Waters are an important community
18 resource. Although pollution and habitat destruction have drastically altered the
19 natural ecosystem, the Receiving Waters serve essential social, environmental and
20 economic functions.
21
22
23

24 50. The first Receiving Water Limitation is that discharges shall not cause or
25 contribute to an exceedance of any applicable water quality standard ("WQS"). *Id.*
26

27 51. WQSs are numeric limits and narrative standards established by the State
28 Board, the various regional boards, and the EPA to protect beneficial uses of the

1 Receiving Waters.

2 52. WQS applicable to discharges from the Facility include, *inter alia*, those
3 set out in the *Water Quality Control Plan – Los Angeles Region: Basin Plan for the*
4 *Coastal Watersheds of Los Angeles and Ventura Counties*¹, California Regional Water
5 Quality Control Board, Los Angeles Region 4 (adopted June 13, 1994, as amended)
6 (“Basin Plan”) and in the Criteria for Priority Toxic Pollutants for the State of
7 California, a.k.a. California Toxics Rule (“CTR”). 65 Fed. Reg. 31712 (May 18,
8 2000); 40 C.F.R. § 131.38.
9

10
11
12 53. Surface waters that cannot support designated beneficial uses (as listed in
13 the Basin Plan) due to the occurrence of high levels of one or more pollutants are
14 designated as impaired water bodies pursuant to Section 303(d). 33 U.S.C. § 1313(d).
15

16 54. According to the 2012 303(d) List of Impaired Water Bodies, Compton
17 Creek is impaired for copper, lead and toxicity. Reach 2 of the Los Angeles River is
18 impaired for, *inter alia*, copper, lead and oil. Reach 1 of the Los Angeles River is
19 impaired for, *inter alia*, aluminum, cadmium, copper, lead, nickel and zinc. The Los
20 Angeles River Estuary is impaired for, *inter alia*, chlordane, lead, sediment toxicity,
21 and zinc. The Los Angeles/Long Beach Inner Harbor is impaired for, *inter alia*,
22 copper, sediment toxicity, and zinc.
23
24
25

26 55. The Basin Plan includes narrative and numeric WQSs for inland surface
27
28

¹ Available at http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/.

1 waters and enclosed bays and estuaries for, among other things: chemical constituents,
2 toxic substances, pH, oil & grease, suspended or settleable matter, and floating
3 materials.
4

5 56. The existing and/or potential Beneficial Uses for downstream of the point
6 at which the Los Angeles River receives storm water discharges from the Facility (i.e.,
7 Los Angeles River Reaches 1 and 2, the Los Angeles River Estuary, Los Angeles
8 Harbor, and San Pedro Bay) include, among others, municipal and domestic supply;
9 groundwater recharge; water contact recreation; non-contact water recreation; warm
10 freshwater habitat; wildlife habitat; wetland habitat; marine habitat, estuarine habitat;
11 rare, threatened, or endangered species; migration of aquatic organisms; spawning,
12 reproduction, and/or early development; commercial and sport fishing, and shellfish
13 harvesting. Basin Plan, Table 2-1.
14
15
16

17 57. EPA promulgated the CTR based on a determination that the numeric
18 criteria were necessary to protect human health and the environment.
19

20 58. The CTR “criteria apply throughout the water body including at the
21 point of discharge into the water body.” 65 Fed. Reg. 31712 paragraph (c)(2)(i).
22

23 59. The Permit’s second Receiving Water Limitation is that storm water
24 discharges shall not adversely impact human health or the environment. 1997 Permit,
25 Section C(1); 2015 Permit, Section VI(B).
26

27 60. The third Receiving Water Limitation is that concentrations of pollutants
28 in storm water discharges shall not threaten to cause pollution or a public nuisance.

1 See 2015 Permit, Section VI(C).

2 61. Thus, discharges with pollutant levels in excess of the Basin Plan
3 standards, CTR criteria, and/or other applicable WQSs are violations of the Permit's
4 Receiving Water Limitations.
5

6 62. U.S. EPA has established Total Maximum Daily Load ("TMDL")
7 regulations applicable to the Los Angeles River, which were subsequently
8 incorporated into the Basin Plan via amendment by Resolution No. R13-004.
9

10 63. The regulatory mechanism used to implement the TMDL wasteload
11 allocations assigned to point sources, including the Facility, is the General Permit.
12

13 64. Use of the Receiving Waters by WATERKEEPER members and public
14 for water contact sports and fishing exposes many people to toxic metals, pathogens,
15 bacteria and other contaminants in storm water and non-storm water discharges. Non-
16 contact recreational and aesthetic opportunities, such as wildlife observation, are also
17 harmed by polluted discharges to the Receiving Waters.
18
19

20 65. Numeric WQS applicable to the Facility include, but may not be limited
21 to, those detailed in TABLE 1.
22

23 //

24 //

25 //

26 //

27 //

TABLE 1
WATER QUALITY STANDARDS APPLICABLE TO THE FACILITY²

PARAMETER	SOURCE	NUMERIC LIMIT
pH	Basin Plan	6.5-8.5 s.u.
Al	Basin Plan	1.0 mg/L
Cu	CTR	0.013 mg/L (CMC)
Zn	CTR	0.120 mg/L (CMC)
Pb	CTR	0.065 mg/L (CMC)
Ni	CTR	0.470 mg/L (CMC)
Cr	Basin Plan	0.016 mg/L (CMC)
Arsenic	CTR	0.34 mg/L (CMC)

D. The Permit's Pollution Prevention Plan Requirements.

66. Permittees must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit, Sections A(1)(a), E(2); 2015 Permit, Sections I(I) (Finding 54), X(B).

67. The SWPPP must include, *inter alia*: i) a narrative description and summary of all industrial activity, potential sources of pollution, and pollutants associated with each potential source; ii) a description of dust and particulate generating activities; iii) a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures; iv) a description of storm water management

² Several of the CTR limits are hardness dependent. Defendant shall adjust the limit using the methods provided in Appendix J of the 2008 EPA Multi-Sector General Permit based on receiving water sampling hardness data as applicable.

1 practices; v) a description of the BMPs to be implemented to reduce or prevent
2 pollutants in storm water discharges and authorized non-storm water discharges; vi)
3 the identification and elimination of non-storm water discharges; vii) the identification
4 and location where materials are being shipped, received, stored, handled, as well as
5 typical quantities of such materials and the frequency with which they are handled;
6 and viii) a description of persons and their current responsibility for developing and
7 implementing the SWPPP. 1997 Permit, Sections A(1)-(10); 2015 Permit, Section X.

10 68. The 2015 Permit requires certain SWPPP enhancements, including a
11 more comprehensive assessment of potential pollutant sources, and more specific
12 descriptions of BMPs to be implemented. *See* 2015 Permit Sections X(G)(2), (4), (5).

14 69. The objectives of the SWPPP are to: i) identify and evaluate sources of
15 pollutants associated with industrial activities that may affect the quality of storm
16 water discharges; and ii) to identify and describe site-specific BMPs to reduce or
17 prevent the discharge of polluted storm water from industrial facilities. 1997 Permit,
18 Section A(2); 2015 Permit, Section X.

21 70. The most important element of any SWPPP prepared pursuant to a
22 *general* permit is the description of each industrial process occurring at the facility,
23 the evaluation of sources of pollution associated with industrial activities, and the
24 identification of pollutants that may affect the quality of stormwater (“Source
25 Evaluation and Pollutant Assessment”). 1997 Permit, Section A(2); 2015 Permit,
26 Sections X(C), (F), (G).

1 71. According to information available to WATERKEEPER, each of the
2 industrial processes/services undertaken at the Facility and described in paragraphs 14
3 and 15 are pollutant sources that must be described and assessed for their potential
4 contribution of pollutants in storm water discharges by AAA as part of the Facility's
5 Source Evaluation and Pollutant Assessment.
6

7 72. The SWPPP must describe, and permittees must then implement, site-
8 specific BMPs tailored to the findings and conclusions of the Source Evaluation and
9 Pollutant Assessment. As described above, BMPs must meet BAT/BCT treatment
10 standards, and prevent stormwater discharges with pollutant concentrations exceeding
11 applicable WQSs. 1997 Permit, Section A(2); 2015 Permit, Sections I(D) (Finding
12 32), X(C), X(H), XXI(A).
13
14
15

16 73. The SWPPP must be evaluated, and revised as necessary, *at least*
17 annually to ensure ongoing compliance. *See* 1997 Permit Sections A(9)-(10); *see also*
18 2015 Permit § X(B).
19

20 74. Failures to develop, implement, or revise an adequate SWPPP constitutes
21 Permit noncompliance. 1997 Permit, Section B(4)(c), 2015 Permit, Section X(B).
22

23 75. The Permit requires permittees to complete an Annual Comprehensive
24 Site Compliance Evaluation ("Compliance Evaluation"). The Compliance Evaluation
25 must include: a review of all visual observation records, inspection reports and
26 sampling analysis data; a visual inspection of all potential pollutant sources for
27 evidence of, or the potential for, pollutants entering the drainage system; an evaluation
28

1 of each BMP to determine whether it is objectively adequate in light of M&RP data;
 2 an assessment of BMP design and implementation effectiveness; a determination
 3 regarding whether additional BMPs are needed to comply with the Permit; and a
 4 visual inspection of equipment needed to implement the SWPPP. 1997 Permit,
 5 Section A(9); 2015 Permit, Section XV.

7
 8 76. Section A(9)(d) of the 1997 Permit requires permittee's submit an annual
 9 Compliance Evaluation that includes an identification of personnel performing the
 10 evaluation, date(s) of the evaluation(s) necessary SWPPP revisions, a schedule for
 11 implementing SWPPP revisions, any incidents of non-compliance and the corrective
 12 actions taken, and a certification that the permittee is in compliance with the Permit.
 13 1997 Permit; Section A(9)(d)(i)-(vi). If certification cannot be provided, the permittee
 14 must explain in the Compliance Evaluation why the facility is not in compliance
 15 and/or report any anticipated noncompliance. 1997 Permit, Section A(9)(d); 2015
 16 Permit, Section XXI(M).

20 **E. The Permit's Monitoring and Reporting Requirements.**

21
 22 77. The 1997 Permit required permittees to develop a monitoring and
 23 reporting program ("M&RP") along with its SWPPP, and then implement the M&RP
 24 as soon as industrial activities began. 1997 Permit, Sections B(1)-(4), E(3). The 2015
 25 Permit contain virtually identical M&RP requirements. 2015 Permit, Sections X(I)
 26 and XI.

27
 28 78. The general objective of the M&RP is to assess Permit compliance.

1 Specifically, the M&RP must be designed and implemented to evaluate the
2 effectiveness of BMP design and implementation. Information derived from the
3 M&RP informs each permittee as to whether it must adapt BMP design or
4 implementation to ensure that storm water and non-storm water discharges are in
5 compliance with the Permit (i.e. Discharge Prohibitions, Effluent Limitations, and/or
6 Receiving Water Limitations). *See* 1997 Permit, Section B(2); *see also* 2015 Permit,
7 Sections X(I) and XI.
8

10 79. The M&RP must include monthly visual observations of storm water
11 discharges, and the documentation of the presence of pollutants. 1997 Permit, Section
12 B(4)(a); 2015 Permit, Section XI(A). Permittees are required to take corrective action
13 to reduce or prevent pollutants from contacting storm water discharges as indicated by
14 observations. 1997 Permit, Section B(4)(c); 2015 Permit, Section XI(A)(3).
15

17 80. The Permit requires permittees to collect storm water samples from each
18 location where storm water is discharged. 1997 Permit, Sections B(5), (7); 2015
19 Permit, Section XI(B)(4). Section B(5)(a) of the 1997 Permit required permittees to
20 collect storm water samples during the first hour of discharge from the first storm
21 event of the Wet Season (defined as October 1 to March 30) and at least one other
22 storm event in the Wet Season. All storm water discharge locations must be sampled.
23 Facility operators that do not collect samples from the first storm event of the Wet
24 Season are still required to collect samples from two other storm events of the Wet
25 Season, and must explain in the Annual Report why the first storm event was not
26
27
28

1 sampled.

2 81. Section XI(B)(2) of the 2015 Permit requires permittees to collect and
3 analyze storm water samples from two (2) Qualifying Storm Events (“QSE”) within
4 the first half of each Reporting Year (July 1 to December 31), and two (2) QSEs
5 within the second half of each Reporting Year (January 1 to June 30). The 2015
6 Permit requires permittees to submit all sampling and analytical results for all samples
7 via SMARTS within thirty (30) days of obtaining all results for each sampling event.
8

9 82. Permittees must analyze each sample for as many as five classes of
10 pollutants, including: 1) Basic Parameters, which are pH, TSS and either total organic
11 carbon (“TOC”) or O&G (1997 Permit, Section B(5)(c)(i); 2015 Permit, Sections
12 XI(B)(6)(a)-(b)); 2) Facility-Specific Parameters, which are site-specific pollutants
13 identified in the Source Evaluation and Pollutant Assessment (1997 Permit, Section
14 B(5)(c)(ii); 2015 Permit, Section XI(B)(6)(c)); 3) Receiving Water Parameters, which
15 are industrial pollutants related to receiving waters with 303(d) listed impairments, or
16 an approved TMDL (1997 Permit, Section B(5)(c)(ii); 2015 Permit, Section
17 XI(B)(6)(e)); 4) Standard Industrial Classification (“SIC”) Code-Based Parameters,
18 which are pollutants common to discharges from particular industrial activities listed
19 in the Permit (*See e.g.* 2015 Permit, Section XI(b)(6)(d)); and 5) Board-Mandated
20 Parameters, which are any additional pollutants identified by the relevant Regional
21 Water Board (*See e.g.* 2015 Permit, Section XI(b)(6)(f)).
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83. Section B(14) of the 1997 Permit required that permittees submit an

1 Annual Report to the applicable Regional Board by July 1 of each year, which must
 2 include, *inter alia*, all records collected per the M&RP and the Compliance
 3 Evaluation. The 2015 Permit contains substantially identical requirements.
 4

5 84. Section XVI of the 2015 Permit requires permittees to submit a
 6 Compliance Checklist with each Annual Report that: i) indicates whether the
 7 permittee complies with, and has addressed all applicable requirements of the 2015
 8 Permit; ii) an explanation for any noncompliance of requirements within the reporting
 9 year, as indicated in the Compliance Checklist; and iii) an identification, including
 10 page numbers and/or sections, of all revisions made to the SWPPP within the
 11 reporting year, the date(s) of the annual Compliance Evaluation. Most importantly,
 12 the Annual Report must outline BMP revisions or additions, if any, that are necessary
 13 for the permittee to comply with the Permit and Act.
 14
 15
 16

17 **F. 2015 Permit Exceedance Response Actions Requirements.**
 18

19 85. The 2015 Permit formalized the “iterative process” directed by the 1997
 20 Permit with procedures for Exceedance Response Actions (“ERA”). 2015 Permit,
 21 Section XII. Permittees must complete ERA corrective actions when data from the
 22 M&RP demonstrates that BMPs are not sufficiently effective at limiting or preventing
 23 pollution in storm water discharges.
 24
 25

26 86. Each permittee starts at Baseline in the first instance, and “if the sampled
 27 effluent exceeds the [Numeric Action Limit, or ‘NAL’] for any parameter, the
 28 discharger is required to take an [ERA]” for any parameter(s) exceeding the NAL. *Id.*

1 87. The first time an NAL is exceeded for a parameter the facility is elevated
2 from Baseline to Level 1 ERA status, and must work with a Qualified Industrial
3 Stormwater Professional (“QISP”) to evaluate and, if necessary, revise its BMPs and
4 submit a report to the State. 2015 Permit, Section XII.C.

6 88. Level 1 requirements include: 1) completing a pollutant source
7 evaluation by October 1 following commencement of Level 1 status; and 2) filing a
8 Level 1 ERA Report by the next January 1. 2015 Permit, Section XII.C.1-2. The
9 Level 1 ERA Report must include detailed descriptions of new and/or revised BMPs
10 that the permittee proposes for bringing the facility into compliance with the Permit’s
11 Discharge Prohibitions, Effluent Limitations and Receiving Water Limitations. *Id.*

13 89. If the facility exceeds the NAL for the same parameter while it is in
14 Level 1 status the facility is elevated to Level 2 status. 2015 Permit, Section XII(D).
15 The facility must then prepare a Level 2 ERA Action Plan detailing how it will
16 address persistent NAL exceedances. 2015 Permit, Section XII.D.1.

18 90. NALs are not intended as technology-based or water quality-based
19 numeric effluent limitations, and were not derived from either BAT or BCT
20 requirements or receiving water objectives.

22 91. A permittee “that does not fully comply with the Level 1 status and/or
23 Level 2 status ERA requirements...is in violation of [the] General Permit.” 2015
24 Permit, Section I(M) (Finding 63).

26 92. The Permit’s ERA structure requires permittees to identify those BMPs

1 necessary to achieve BAT and/or BCT treatment standards.

2 **V. STATEMENT OF FACTS**

3 93. AAA's owns and operates the Facility, which has been enrolled in the
4 Permit since April 2, 1992.

5 94. According to multiple filings certified by AAA, the Facility's primary
6 SIC Code is 3471 (Electroplating, Plating, Polishing, Anodizing, and Coloring).
7
8 AAA has not identified any secondary or tertiary SIC codes.
9

10 95. The Facility spans, at a minimum, 410 to 424 East Dixon Avenue. The
11 Facility is surrounded almost entirely by other industrial facilities, with the notable
12 exception of 5 single-family homes that are immediately to the Facility's east. There
13 are no fewer than 4 schools near the Facility, including Dr. Ralph Bunche Middle
14 School, which is located less than one block to the west.
15

16 96. AAA's website indicates the Facility is 50,000 square feet. The Notice
17 of Intent to Comply with the Terms of the General Permit filed on February 3, 2015
18 indicates that the Facility is 43,500 square feet.
19

20 97. The Facility is approximately 2.0 miles east of Compton Creek, and
21 approximately 3.0 miles west of the Los Angeles River.
22

23 98. According to AAA's SWPPP dated February 6, 2015, "the [F]acility has
24 two definable discharge points on the north boundary of the facility along Dixon St.
25 The remaining discharge of storm water is generally to the north as sheet flow."
26

27 99. Information available to WATERKEEPER indicates that the Facility has
28

1 *at least* 3 discharge points, including the sheet flow onto Dixon noted in numerous
2 Annual Reports. The Facility may have *as many as* 10 discharge points, including
3 roof downspouts along the driveway to the residences located west of the Facility.
4

5 100. On information and belief, Plaintiff alleges that all industrial activities
6 performed at the Facility, including those described in paragraphs 14 and 15 above,
7 are potential sources of water contamination, and that the majority of storm water
8 discharges from the Facility contain storm water that is commingled with runoff from
9 areas at the Facility where industrial processes occur and where industrial pollutants
10 are found, including pollutants initially emitted into the air that settle on the ground
11 or other surfaces before being washed away in storm water.
12
13

14 101. WATERKEEPER is informed and believes, and thereupon alleges that
15 storm water flowing over the Facility collects suspended sediment, dirt, metals, and
16 other pollutants, which are discharged to the Receiving Waters.
17
18

19 102. On information and belief, Plaintiff alleges that the management
20 practices at the Facility do not prevent the sources of water contamination from
21 causing the discharge of pollutants to waters of the United States.
22

23 103. AAA has taken and analyzed samples (or arranged for their
24 collection/analysis) of storm water discharges at the Facility since at least 1998. AAA
25 has certified and submitted to the Regional Board at least some of these analytical
26 results, which are summarized in EXHIBIT B. EXHIBIT B establishes that storm
27 water discharges from the Facility consistently contain pollutant concentration levels
28

1 that are above both Benchmark targets and various applicable WQS.

2 104. Based on an assessment of the data summarized in EXHIBIT B, as well
3 as its review of planning documents and reconnaissance visits conducted by staff and
4 agents, WATERKEEPER alleges that AAA has and continues to violate the Permit
5 and Act's public health and environmental protection mandates.
6

7 105. Plaintiff alleges that the storm water sampling data summarized in
8 EXHIBIT B, and specifically the data establishing pollutant concentrations exceeding
9 Benchmark targets, demonstrates that AAA has failed to develop, implement or
10 maintain BMPs at the Facility that meet BAT/BCT standards in violation of Effluent
11 Limitation B(3) of the 1997 Permit and Effluent Limitation I.D. and V.A. of the 2015
12 Permit.
13
14
15

16 106. WATERKEEPER alleges that the data in EXHIBIT B, which contains
17 evidence of consistent exceedances of the CTR numeric limits, establish that AAA
18 has and likely continues to discharge storm water containing pollutant concentrations
19 that adversely effect the environment and human health in violation of the Permit's
20 Receiving Water Limitations.
21
22

23 107. WATERKEEPER further alleges that the data in EXHIBIT B establish
24 that AAA discharges storm water with pollutant concentrations that exceed applicable
25 WQSs from the Basin Plan, and which evidences additional violations of the Permit's
26 Receiving Water Limitations.
27

28 108. On information and belief, and its review of the two SWPPP's available

1 via SMARTS—one revised on November 7, 2008 (“2008 SWPPP”) and another
2 revised on February 6, 2015 (“2015 SWPPP”)—WATERKEEPER alleges that AAA
3 has failed, and continues to fail, to prepare, implement, review and revise a legally
4 adequate SWPPP, which constitutes an independent violation of the General Permit.
5

6 109. On information and belief, WATERKEEPER alleges that the 2008 and
7 2015 SWPPPs do not contain a legally adequate Source Evaluation and Pollutant
8 Assessment (*see e.g.* 2015 Permit §§ X(F), (G)), lack legally adequate BMPs and
9 BMP descriptions (*see e.g.* 2015 Permit § X(H)), do not contain a legally adequate
10 M&RP (*see e.g.* 2015 Permit §§ X(I) and XI), and the Site Maps fail to include
11 features required by the Permit.
12
13

14 110. On information and belief, Plaintiff alleges that AAA has failed to
15 effectively implement BMPs described in (or included by reference) its SWPPPs and
16 other compliance documents, including but not limited to plans/reports developed as
17 part of the ERA remedial procedures required by Section XII of the 2015 Permit.
18
19

20 111. The inadequacy of the BMPs at the Facility is a result of the Defendant’s
21 failure to develop and implement an adequate SWPPP and M&RP for the Facility.
22

23 112. On information and belief, Plaintiff alleges that AAA has failed to
24 implement an adequate M&RP, most specifically a failure to collect a sufficient
25 number of storm water samples, failure to collect samples from each discharge point,
26 and failure to analyze collected samples for all pollutants required by the Permit.
27
28

113. On information and belief, Plaintiff alleges that AAA failed to complete

1 required ERA in 2016, and that its subsequent efforts to comply with the ERA
2 procedures are patently deficient.

3 114. On information and belief, Plaintiff alleges that AAA has failed to
4 complete a legally adequate Compliance Evaluation in any of the last 5 years.

6 115. On information and belief, Plaintiff alleges that AAA has submitted
7 Annual Reports over at least the last five years that contain numerous, material errors
8 and omissions, including failures to describe legally adequate corrective actions and
9 anticipated future non-compliance.
10

11 VI. CLAIMS FOR RELIEF

13 FIRST CAUSE OF ACTION

14 **Defendant's Discharges of Contaminated Storm Water in** 15 **Violation of the Permit's Effluent Limitations and the Act** 16 **(33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))**

17 116. WATERKEEPER re-alleges and incorporates all of the preceding
18 paragraphs as if fully set forth herein.

19 117. WATERKEEPER is informed and believes, and thereon alleges, that
20 Defendant has failed and continues to fail to reduce or prevent pollutants associated
21 with industrial activities through the implementation of BMPs at the Facility that
22 achieve BAT/BCT treatment standards.
23

24 118. WATERKEEPER is informed and believes, and thereon alleges, that
25 discharges of storm water containing levels of pollutants that do not achieve
26 compliance with BAT/BCT-level control from the Facility occur every time storm
27
28

1 water is discharged. Defendant's failure to develop and/or implement BMPs that
2 achieve the pollutant discharge reductions attainable via BAT or BCT at the Facility is
3 a violation of the Permit and the Act. *See* 1997 Permit, Section B(3); *see also* 2015
4 Permit, Sections I(D) (Finding 32), V(A); *see also* 33 U.S.C. § 1311(b).
5

6 119. Defendant violates and will continue to violate the Permit's Effluent
7 Limitations each and every time storm water containing levels of pollutants that do
8 not achieve BAT/BCT standards discharges from the Facility.
9

10 120. Each and every violation of the Permit's Effluent limitations is a separate
11 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
12

13 121. Defendants' violations of the Permit's Effluent Limitations and the Act are
14 ongoing and continuous.
15

16 122. By committing the acts and omissions alleged above, AAA is subject to
17 an assessment of civil penalties for each and every violation of the Act occurring from
18 May 7, 2013 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C.
19 §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
20

21 123. An action for injunctive relief is authorized by section 505(a) of the Act,
22 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
23 would irreparably harm Plaintiff and the citizens of the State of California, for which
24 harm WATERKEEPER has no plain, speedy, or adequate remedy at law.
25
26

27 124. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
28 because an actual controversy exists as to the rights and other legal relations of the

Parties.

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

SECOND CAUSE OF ACTION

Defendant's Discharges of Contaminated Storm Water in Violation of the Permit's Receiving Water Limitations and the Act (33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))

125. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

126. WATERKEEPER is informed and believes, and thereon alleges, that discharges of storm water containing levels of pollutants that adversely impact human health and/or the environment from the Facility occur each time storm water discharges from the Facility.

127. WATERKEEPER is informed and believes, and thereon alleges, that storm water containing levels of pollutants that cause or contribute to exceedances of water quality standards has been discharged and continues to be discharged from the Facility each time stormwater is discharged from the Facility.

128. Plaintiff is informed and believes, and thereupon alleges, that since at least May 7, 2013, Defendant has discharged polluted storm water from the Facility causing or contributing to the violation of the applicable WQS. and adversely impacting human health or the environment in violation of the Permit's Receiving Water Limitations.

129. Every day, since at least May 7, 2013, that Defendant has discharged

1 polluted storm water from the Facility in violation of the Permit is a separate and
 2 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3 130. Each and every violation of the Permit's Receiving Water Limitations is
 4 a separate and distinct violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

6 131. By committing the acts and omissions alleged above, AAA is subject to
 7 an assessment of civil penalties for each and every violation of the Act occurring from
 8 May 7, 2013 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C.
 9 §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

12 132. An action for injunctive relief is authorized by Act section 505(a),
 13 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
 14 would irreparably harm Plaintiff and the citizens of the State of California, for which
 15 WATERKEEPER has no plain, speedy, or adequate remedy at law.

17 133. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
 18 because an actual controversy exists as to the rights and other legal relations of the
 19 Parties.
 20

21 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
 22 hereafter.
 23

24 **THIRD CAUSE OF ACTION**
 25 **Defendant's Failure to Prepare, Implement, Review, and Update**
 26 **an Adequate Storm Water Pollution Prevention Plan**
 27 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

28 134. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if

1 fully set forth herein.

2 135. Plaintiff is informed and believes, and thereupon alleges, that Defendant
3 has not developed and implemented a legally adequate SWPPP for the Facility.
4

5 136. Each day since May 7, 2013, that Defendant has not developed,
6 implemented and updated a legally adequate SWPPP for the Facility is a separate and
7 distinct violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
8

9 137. Defendant has been in violation of the SWPPP requirements every day
10 since May 7, 2013. Violations continue each day that an adequate SWPPP for the
11 Facility is not developed and fully implemented.
12

13 138. By committing the acts and omissions alleged above, AAA is subject to
14 an assessment of civil penalties for each and every violation of the Act occurring from
15 May 7, 2013 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C.
16 §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
17

18 139. An action for injunctive relief is authorized by Act section 505(a),
19 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
20 would irreparably harm Plaintiff and the citizens of the State of California, for which
21 harm WATERKEEPER has no plain, speedy, or adequate remedy at law.
22

23 140. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
24 because an actual controversy exists as to the rights and other legal relations of the
25 Parties.
26
27

28 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth

hereafter.

FOURTH CAUSE OF ACTION
Defendant's Failure to Develop and Implement an
Adequate Monitoring and Reporting Program
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

141. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

142. Plaintiff is informed and believes, and thereupon alleges, Defendant has not developed and implemented a legally adequate monitoring and reporting program for the Facility.

143. Each day since May 7, 2013, that Defendant has not developed and implemented an adequate monitoring and reporting program for the Facility in violation of the Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite collection/monitoring and analytical results is ongoing and continuous.

144. By committing the acts and omissions alleged above, AAA is subject to an assessment of civil penalties for each and every violation of the Act occurring from May 7, 2013 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

145. An action for injunctive relief is authorized by Act section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which

1 harm WATERKEEPER has no plain, speedy, or adequate remedy at law.

2 146. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
3 because an actual controversy exists as to the rights and other legal relations of the
4 Parties.
5

6 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
7 hereafter.
8

9 **FIFTH CAUSE OF ACTION**
10 **Defendant's Failure to Accurately Certify Compliance**
11 **in Annual Reports in Violation of the Permit and the Act**
12 **(33 U.S.C. §§ 1311, 1342, 1365(a) and 1365(f))**

13 147. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
14 fully set forth herein.

15 148. Defendant has not accurately certified compliance with the Permit in
16 each of its annual reports submitted since at least April 13, 2013.
17

18 149. Each day since at least May 7, 2013, that Defendant does not accurately
19 certify compliance with the General Permit is a separate and distinct violation of the
20 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be
21 in violation of the General Permit's certification requirement each day it maintains an
22 inaccurate certification of compliance with the General Permit.
23
24

25 150. By committing the acts and omissions alleged above, AAA is subject to
26 an assessment of civil penalties for each and every violation of the Act occurring from
27 May 7, 2013 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C.
28

1 §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

2 151. An action for injunctive relief is authorized by Act section 505(a),
 3 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
 4 would irreparably harm Plaintiff and the citizens of the State of California, for which
 5 harm WATERKEEPER has no plain, speedy, or adequate remedy at law.
 6

7 152. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
 8 because an actual controversy exists as to the rights and other legal relations of the
 9 Parties.
 10

11 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
 12 hereafter.
 13

14 **RELIEF REQUESTED**

15 Wherefore, Plaintiff respectfully requests that this Court grant the following
 16 relief:
 17

18 a. Declare Defendant to have violated, and to be in violation of, the Act as
 19 alleged herein;
 20

21 b. Enjoin Defendant from discharging polluted storm water from the
 22 Facility except as authorized by the Permit;
 23

24 c. Enjoin Defendant from further violating the substantive and procedural
 25 requirements of the Permit;
 26

27 d. Order Defendant to immediately implement storm water pollution
 28 control technologies and measures that are equivalent to BAT or BCT, and that prevent

1 pollutants in the Facility's storm water from contributing to violations of any water
2 quality standards;

3 e. Order Defendant to comply with the Permit's monitoring and reporting
4 requirements, including ordering supplemental monitoring to compensate for past
5 monitoring violations;

6 f. Order Defendant to prepare a SWPPP consistent with the Permit's
7 requirements and implement procedures to regularly review and update the SWPPP;

8 g. Order Defendant to provide Plaintiff with reports documenting the
9 quality and quantity of their discharges to waters of the United States and their efforts
10 to comply with the Act and the Court's orders;

11 h. Order Defendant to pay civil penalties of up to \$37,500 per day per
12 violation for each violation of the Act since April 13, 2013, up to and including
13 November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015
14 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and
15 40 C.F.R. §§ 19.1 - 19.4;

16 i. Order Defendant to take appropriate actions to restore the quality of
17 waters impaired or adversely affected by their activities;

18 j. Award Plaintiff's costs (including reasonable investigative, attorney,
19 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
20 § 1365(d); and,

21 k. Award any such other and further relief deemed appropriate by the
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28

1 Court.

2 DATED: July 6, 2018

Respectfully submitted,

3
4 By: /s/ Jesse C. Swanhuysen
5 Jesse C. Swanhuysen
6 **Attorney for Plaintiff**
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COMPLAINT

